

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BENJAMIN VANFOSSAN,

Plaintiff,

v.

ARNEL DELOS SANTOS,

Defendants.

Case No. 1:20-cv-00173-DAD-EPG

**ORDER GRANTING EXTENSION OF
TIME TO FILE OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT REGARDING
EXHAUSTION OF ADMINISTRATIVE
REMEDIES AND TO FILE CROSS-
MOTION FOR SUMMARY JUDGMENT**

(ECF No. 47)

On August 27, 2021, Defendants De Los Santos, Gonzales, Robles, Huerta, Alkire, Cruz, Amaya, and Lewandowski sought a motion to modify the Court's scheduling Order to file a motion for summary judgment regarding the exhaustion of administrative remedies, and cross-motion for summary judgment regarding the same. (ECF No. 47). Specifically, Defendants state that recent wildfires have prevented them from securing needed declarations in opposition to Plaintiff's motion for summary judgment and in support of their cross-motion for summary judgment and thus they are unable to comply with the current deadline of August 27, 2021. A declaration from counsel is included in support of this request. Finding good cause, the Court will grant Defendants' request to file their opposition and cross-motion for summary judgment by no later than September 10, 2021.

However, the Court notes that part of the motion requests a different form relief. Although the body of the motion, the declaration, and proposed order request that the Court allow Defendants to file their opposition and cross motion for summary judgment on the issue of exhaustion of administrative remedies by September 10, 2021, the conclusion section of the motion asks the Court to “modify the Discovery and Scheduling Order and extend the discovery period for an additional sixty days so that Defendant may conduct additional discovery” regarding “Plaintiff’s recent claims of library-employee misconduct [that] may reveal Plaintiff’s evidence of Defendant’s state of mind and whether any unconstitutional policy and practice of excluding African Americans from clerk positions existed” and to then “stay Defendant’s obligation to oppose Plaintiff’s summary judgment motion, and consideration of Plaintiff’s motion, until discovery into these matters is complete.” (*Id.* at 4). Given that this request for relief contradicts the remainder of the motion, the declaration, and the proposed order, and because this case proceeds on claims regarding alleged due process violations in connection with prison disciplinary proceedings, not claims regarding library-employee misconduct, the Court assumes that this section of the motion has been included in error and will deny the request for relief, to the extent it was intended, without prejudice. (*See* ECF Nos. 18, 20).

Good cause having been shown, IT IS ORDERED that Defendants' motion (ECF No. 47), to the extent that it requests an extension of time to file their opposition and cross motion for summary judgment by no later than September 10, 2021, is granted. Defendants' opposition and cross motion for summary judgment on the issue of exhaustion of administrative remedies is due no later than September 10, 2021. To the extent that Defendants request any other relief in the motion, such request is denied without prejudice.

IT IS SO ORDERED.

Dated: **August 30, 2021**

/s/ Eric P. Grogg
UNITED STATES MAGISTRATE JUDGE